



## The Attorney General of Texas

October 12, 1983

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An Equal Opportunity/  
Affirmative Action Employer

Mr. Kenneth H. Ashworth  
Commissioner  
Coordinating Board  
Texas College and University System  
200 E. Riverside Drive  
Austin, Texas 78741

Opinion No. JM-77

Re: Whether Coordinating Board has authority to approve college construction funded in part by ad valorem tax funds received under former article VII, section 17, of the Texas Constitution

Dear Mr. Ashworth:

You have requested clarification of Attorney General Opinion MW-594 (1982), which holds that construction projects for institutions of higher education funded by state ad valorem taxes received under former article VII, section 17, of the Texas Constitution, are not subject to Coordinating Board approval. Although section 61.058 of the Education Code provides that the Coordinating Board shall approve or disapprove all new construction of facilities at institutions of higher education, projects funded under former article VII, section 17, of the constitution were held in that opinion to be exempted by the constitution itself.

You now inquire as to what proportion of the total funding of a project must derive from state ad valorem taxes in order to exempt it from the requirement of Coordinating Board approval under section 61.058(8) of the Education Code.

In our opinion, Attorney General Opinion MW-594 was incorrectly decided. Article VII, section 17 was repealed at the November 2, 1982 election. Article VIII, section 1-e of the Texas Constitution was amended at the same election to provide as follows:

Sec. 1-e. 1. No State ad valorem taxes shall be levied upon any property within this State.

2. All receipts from previously authorized State ad valorem taxes that are collected on or after the effective date of the 1982 amendment to this section shall be deposited to the credit of the general fund of the county collecting the

taxes and may be expended for county purposes. Receipts from taxes collected before that date shall be distributed by the legislature among institutions eligible to receive distributions under prior law. Those receipts and receipts distributed under prior law may be expended for the purposes provided under prior law or for repair and renovation of existing permanent improvements.

The recently enacted constitutional amendment changes the mode of distribution of the ad valorem tax funds from that formerly dictated by article VII, section 17. See Attorney General Opinion H-1129 (1978). Under article VIII, section 1-e, tax receipts collected before the effective date of the amendment are to be appropriated by the legislature and projects constructed with those funds are subject to Coordinating Board approval to the same extent that other legislatively appropriated funds for college construction are subject to such approval. See Jessen Associates, Inc. v. Bullock, 531 S.W.2d 593 (Tex. 1976).

The new constitutional amendment states with respect to receipts distributed under prior law, that is, article VII, section 17, that they "may be expended for the purposes provided under prior law or for repair and renovation of existing permanent improvements." The new provision preserves the purposes for which funds could be spent under former article VII, section 17. It does not preserve the language that rendered article VII, section 17 "self-enacting." Thus, any language of article VII, section 17, which might have excepted ad valorem tax funds from the requirements of section 61.058(8) of the Education Code is no longer in effect. Construction projects are not excepted from Coordinating Board approval under section 61.058(8) merely because they are funded in whole or part with ad valorem tax funds. Cf. Attorney General Opinion MW-245 (1980). Of course, if the project to be funded by these receipts has been approved by the legislature, Coordinating Board approval will be unnecessary. See Attorney General Opinion MW-520 (1982).

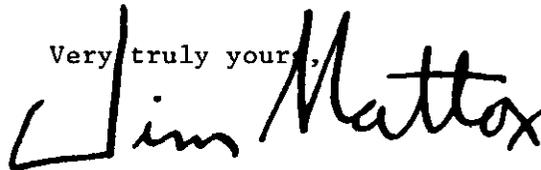
Thus, the answer to your question is that Coordinating Board approval is required for all construction projects even if they are funded in whole or in part from ad valorem tax funds. Attorney General Opinion MW-594 is hereby overruled.

#### S U M M A R Y

Construction projects are not excepted from Coordinating Board approval under section 61.058 of the Education Code merely because they are funded in whole or in part from ad valorem tax

funds. Attorney General Opinion MW-594 is  
overruled.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive style with a large, prominent "J" and "M".

J I M M A T T O X  
Attorney General of Texas

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